

TAB A

Deposition of Steven R. Verduyn, 4/6/2005

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 CYCLE-CRAFT CO., INC., d/b/a
4 BOSTON HARLEY-DAVIDSON/BUELL,

5 Plaintiff,

6 vs. Civil Action No. 04 11402 NMG

7 HARLEY-DAVIDSON MOTOR COMPANY, INC.
8 and BUELL DISTRIBUTION COMPANY, LLC,

9 Defendants.

10 Video Deposition of STEVEN R. VERDUYN

11
12 Wednesday, April 6th, 2005

13
14 15 10:09 a.m.

16 at

17 GRAMANN REPORTING, LTD.
18 710 North Plankinton Avenue, Suite 710
19 Milwaukee, Wisconsin

20 Reported by Sarah A. Reinicke, RPR/RMR/CRR

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1 with.

2 Q So those are two separate Harley-Davidson
3 dealerships, one in Florida, and one in Corning, New
4 York?

5 A That's correct.

6 Q And they both received termination letters?

7 A That's my understanding.

8 Q Was it in connection with the same incident or the
9 same vehicles?

10 A Yes.

11 Q Are you aware of any other termination letters being
12 sent by Harley-Davidson for violations of the
13 nonretail sales policy besides these four that you've
14 just mentioned?

15 A There are others that I'm aware of.

16 Q One is Cycle-Craft?

17 A Cycle-Craft, that's correct.

18 Q Schott would be another in Maine?

19 A Schott Harley-Davidson in Lewiston, Maine, correct.

20 Q Any others?

21 A I had previously mentioned Wausau Harley-Davidson.

22 Q Right. I'm trying to get the whole universe here.
23 You mentioned Ray Price in Raleigh.

24 A Okay.

25 Q You've mentioned Wausau, and you've mentioned Harding

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1 and a Florida dealership that you don't know the name
2 of.

3 A Um-hmm.

4 Q That's four.

5 A There were others prior to the Bob Schultz issue.

6 Q Well, is Bob Schultz another one?

7 A That's my understanding, yes.

8 Q I mean, you mentioned Cycle-Craft and Schott and Bob
9 Schultz. Are those not dealership files that you
10 consulted in preparing your summary document?

11 A I initially consulted all dealer files when I
12 prepared the document.

13 Q Okay. So you've now mentioned -- without reference
14 to the document, you've now mentioned seven
15 dealerships that you are aware that have received
16 termination letters based on a nonretail sales
17 violation of the nonretail sales policy. I want to
18 make sure I have this right. One would be Ray Price
19 in Raleigh; correct?

20 A Correct.

21 Q Two, Wausau in Wisconsin; three, Harding in Corning,
22 New York; four, a Florida dealership that you can't
23 remember the name; five, Cycle-Craft; six, Schott;
24 and seven, Bob Schultz in St. Louis. So my question
25 is, are you aware of any others?

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1 A Yes.

2 Q What are there? What dealerships?

3 A Waterloo, Iowa; Blackfoot, Idaho; Eureka, California;

4 Santa Barbara, California.

5 Q Do you know the names of these dealerships apart from

6 just their location?

7 A If you go through the cities that I gave you, I could

8 probably get pretty close.

9 Q Okay. Waterloo, Iowa?

10 A Harley-Davidson Cycle Center.

11 Q Blackfoot, Idaho?

12 A I believe that was Blackfoot Harley-Davidson.

13 Q Eureka, California?

14 A I don't recall the name of that one.

15 Q Any others?

16 A There was a dealer in Arizona. And I can't recall

17 the name or city. Santa Fe, New Mexico as well if I

18 had not already mentioned that.

19 Q I'm sorry, you mentioned Santa Barbara, California?

20 A Um-hmm.

21 Q What was that dealership?

22 A Bad To The Bone.

23 Q Now, these last seven that you named, Schultz,

24 Waterloo, Iowa; Blackfoot, Idaho; Eureka, California;

25 one in Arizona; one in Santa Fe; one in Santa

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1 Barbara, are those all dealership files that you
2 consulted in preparing your summary document?

3 MR. BERKOWITZ: Do you mean to include the
4 update as well or just the initial?

5 MR. REHNQUIST: Yeah. Both.

6 Q Both the initial one and the update.

7 A In -- I was either directly involved with -- with the
8 audits or had other knowledge that those were
9 terminated or issued a termination letter. The files
10 themselves, however, at the point that they've
11 reached termination are long out of the dealer file
12 and given to counsel.

13 Q What is the time frame? Just tell me to the best of
14 your knowledge. When was the termination letter sent
15 to Bob Schultz approximately?

16 A 2003 or 2004.

17 Q Waterloo, Iowa?

18 A Same time frame. 2003 or 2004.

19 Q Blackfoot, Idaho?

20 A That was earlier. Perhaps 2001/2002.

21 Q Eureka, California?

22 A Early as well. Late '90s/early 2000s.

23 Q The one in Arizona?

24 A 2002 or 2003.

25 Q Santa Fe?

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1 A Again, 2002 or 2003 thereabout.

2 Q Santa Barbara?

3 A 2001 or 2002. And these are all approximate. I
4 don't --

5 Q I understand. I understand. Ray Price in Raleigh?

6 A 2002 or 2003.

7 Q Wausau in Wisconsin?

8 A I believe that was in 2004.

9 Q So that means we've got a total list now of one, two,
10 three, four, five, six, seven, eight, nine, 10, 11,
11 12, 13. Does that sound about right?

12 A That's about right, um-hmm.

13 Q How many of those threatened terminations have led to
14 litigation?

15 A Our legal counsel was involved in all of those. To
16 the extent that there was extensive litigation or
17 court proceedings, I likely don't have direct
18 knowledge on the individual cases.

19 Q Do you know in how many of those cases the -- either
20 the dealer or Harley-Davidson filed a lawsuit?
21 Putting aside whether it was extensive or not.

22 A Less than half.

23 Q In the 40 to 50 files that you reviewed in preparing
24 your initial summary document, was there a "Dear
25 Dealer" inquiry letter to the dealer in each case

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1 THE VIDEOGRAPHER: A minute or so.

2 BY MR. REHNQUIST:

3 Q Are you aware, Mr. Verduyn, that prior to that letter
4 which was sent to Harley-Davidson at about the same
5 time as the termination letter, that Cycle-Craft --
6 I'm sorry. Mr. Verduyn, are you aware that at any
7 point prior to the termination letter being sent to
8 Harley-Davidson -- I'm sorry, being sent to
9 Cycle-Craft, that Cycle-Craft was given an
10 opportunity to demonstrate to Harley-Davidson that
11 the sales that were being investigated were retail
12 sales?

13 A Some of those sales, yes.

14 Q When? When were they given that opportunity?

15 A When I was on site at the audit.

16 Q Did you ask people? Did you ask questions of people
17 about particular sales?

18 A I asked the general manager of the dealership, Ron
19 Bucbaum, about some of the sales to employees that
20 all occurred right at the end of the model year.

21 Q What did you ask him?

22 A To explain the number -- large number of sales to
23 people that had occurred right at the end of the
24 model year. That's best. I don't remember exactly
25 what I asked him, but it was to that effect.

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1 Q And how many vehicles were sold to employees, to the
2 best of your memory?

3 A Employees, families and what appeared to be relatives
4 or so on, I -- approximately 12, 13, give or take.

5 Q Was Cycle-Craft given any opportunity to explain to
6 Harley-Davidson or to demonstrate to Harley-Davidson
7 that any of the other vehicles that were part of your
8 investigation were in fact retail sales?

9 MR. BERKOWITZ: At any time or prior to the
10 letter?

11 BY MR. REHNQUIST:

12 Q At any time prior to the termination letter being
13 sent.

14 A Not that I can recall.

15 THE VIDEOGRAPHER: Counsel, I have a
16 warning.

17 MR. REHNQUIST: Yeah, take a break.

18 THE VIDEOGRAPHER: Going off the record.

19 This is the end of videotape two. Off the record at
20 12:26 p.m.

21 (A lunch recess was taken.)

22 THE VIDEOGRAPHER: This is the beginning of
23 videotape number two in the continuing deposition of
24 Steven R. Verduyn. We are back on the record at
25 1:37 p.m.

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1 MR. BERKOWITZ: You can answer.

2 THE WITNESS: Can you repeat the question,
3 please?

4 BY MR. REHNQUIST:

5 Q Yeah. Before initiating a meeting with counsel, did
6 you form an opinion or make a recommendation as to
7 whether it would be a good idea or not for
8 Harley-Davidson to disclose to dealers the identity
9 of gray market actors?

10 A In my own mind, yes.

11 Q And what was that -- what was the view that you
12 developed in your own mind?

13 A It was my opinion that that information should be
14 shared.

15 Q Why?

16 A To stem the growth in nonretail sales activity to
17 certain brokers, certain common last name people that
18 were appearing throughout the country buying bikes.

19 Q Was Lee Custom Cycle one of those?

20 A No.

21 Q Did you discuss your view on this matter with anyone
22 else at Harley-Davidson before you initiated a
23 meeting with counsel?

24 MR. BERKOWITZ: Other than counsel?

25 MR. REHNQUIST: Well, yeah. Sorry.

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1 Q Other than counsel.

2 A I don't recall doing so.

3 Q Who did you report to? Let me break that down. With
4 respect to your responsibilities as the manager of
5 credit programs, who did you report to?

6 MR. BERKOWITZ: Time frame?

7 THE WITNESS: Yeah, I've had a number of --

8 BY MR. REHNQUIST:

9 Q During 2003.

10 A I believe that would have been either Johnny
11 Hutchinson or Dave Hall.

12 Q And with respect to your responsibilities in
13 investigating suspected nonretail sales, was there
14 someone that you reported to?

15 MR. BERKOWITZ: Same time frame?

16 BY MR. REHNQUIST:

17 Q During the same time frame.

18 A Generally, no. The reporting that I would do on that
19 was to or for the respective DFO for wherever the
20 problem was. I worked one on one with them on the --
21 on the issue.

22 Q One E-mail of Mike Malicki responds to you, and he
23 notes that "Gene also said they hammered in a huge
24 amount at the end of last year as well, so maybe we
25 should look at the end of MY '02"?

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1 while you were there besides what you previously
2 testified to about the conversations with Bucbaum,
3 Atwood and McGrath?

4 A I did.

5 Q What conversation was that? And, again, let's
6 exclude conversation in the way of hi, hello, how's
7 the weather, where can we eat, stuff like that.

8 A Bucbaum had kind of given or appointed -- it was one
9 of the salesmen, like a sales manager to kind of show
10 us, help us, act as kind of an aid of sorts. And at
11 one point I had asked him -- Bucbaum was gone or
12 unavailable or in a meeting or something, and I had
13 asked him about the -- we couldn't -- about the three
14 files that I couldn't find any records of that were
15 nonemployees. I believe the vehicles were registered
16 to Cycle-Craft itself, to the business or to Boston
17 Harley-Davidson. I can't recall. But it was
18 registered to -- as the dealership reflected as the
19 retail purchaser.

20 Q That's what the SWR said?

21 A Yeah.

22 Q And so you had a conversation with some other
23 employee about that?

24 A Correct.

25 Q And what was that conversation? What do you recall

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1 about that conversation?

2 A I had asked him about the sales jackets and if he
3 knew anything about the bikes, if they had been
4 made -- some dealers will put the bikes in their
5 own -- in their own names for personal pleasure or to
6 put them in a museum or display them or so on. And I
7 had asked him if that was the -- you know, the case
8 with these. I couldn't find anything, and it was --
9 it's out of the ordinary that a dealership will do
10 that. It happens on occasion, but it's not normal.
11 Not regular.

12 Q But you have seen that before?

13 A Yes.

14 Q And what did the employee tell you?

15 A He said, "Give me the VIN numbers, and I'll see what
16 I can find out." He didn't -- top of his head he
17 didn't know. He went away somewhere and came back
18 sometime later, a short time later, and said, "Oh,
19 those bikes are downstairs. We've still got them
20 here. They're not sold."

21 Q Did he say anything else?

22 A I had asked him if there were files anywhere. Again,
23 I couldn't -- and that was the original reason I had
24 talked to him, because I couldn't find anything about
25 them. Him being a salesman and the bikes being

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1 registered to the dealership, I thought he would
2 maybe have some knowledge. It's not uncommon that
3 those might be -- because those bikes are reported as
4 sold to the dealer, that the -- that a dealership
5 employee would have the sales jackets back in an
6 office somewhere as compared to filed with regular
7 customers. Because they're still the technical owner
8 of the bike.

9 Q But did he say anything else apart from "They're
10 here"?

11 A Not that I recall.

12 Q Do you recall any further conversation with this
13 employee about those three motorcycles?

14 A I don't recall any further conversation.

15 Q Did you go look at them?

16 A No.

17 Q Did you ask any questions about them?

18 A No. Aside from -- let me clarify that. The only
19 questions that I did ask were if there were any sales
20 files or paperwork on them, to which we couldn't find
21 any.

22 Q And what did the employee tell you? You may have
23 already answered that question. Did the employee
24 give you any explanation as to why there weren't any
25 sales files for those bikes?

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1 A "They're still here. They're downstairs." That was
2 the extent of it.

3 Q But that was referring to the bikes and not the
4 files, I gather.

5 A Right. No, he couldn't answer anything on the files.

6 Q I gather from what you're saying that there was some
7 kind of casual conversation that you had with
8 Ms. McGrath over the course of the two days given the
9 proximity of her office?

10 A That's correct.

11 Q And did Mr. Malicki also have casual conversation
12 with Ms. McGrath over the course of those two days?

13 A I would assume so.

14 Q I mean, you were working in the same space for most
15 of the time presumably?

16 A That's correct. But there were times where I might
17 be reviewing a file in one room, Mike is in the other
18 room with McGrath making copies. They had
19 conversations -- I assume that they may have, but I
20 don't know for a fact.

21 BY MR. REHNQUIST:

22 Q Do you -- okay, you complete your on-site audit, and
23 then you return to Milwaukee; correct?

24 A Um-hmm. Correct.

25 Q And what do you do, if anything, to -- to write up or

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1 sales were documented in that pile. That could have
2 even been the problem.

3 MR. REHNQUIST: Okay.

4 Q What observations did you make about the pile that
5 you described as the pile that related to employee
6 names and family names?

7 A The -- I was unable to locate any files that
8 referenced that employee or family member name and
9 that motorcycle on it. I was able in most cases, as
10 I recall, to locate the files for subsequent owners
11 or owners -- second owners as reported to
12 Harley-Davidson for those individual motorcycle
13 vehicle identification numbers.

14 Q And I don't mean to ask this question twice if you
15 already answered it, but did you ask Ron Bucbaum when
16 you had the conversation with him during the audit
17 whether there were any files or any documentation
18 reflecting the purchase by the employees and family
19 members of those motorcycles?

20 A We had already talked about that.

21 Q Okay. I'm sorry. I forget what the answer was.

22 A I did ask Ron about them simply because those were
23 the only set of files that I was unable to locate in
24 addition to the -- those and the two or three sales
25 to Boston Harley-Davidson or to Cycle-Craft.

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1 Q And he had said that there weren't any such sales
2 files? I guess my question was specifically -- I
3 know you talked to Ron about the situation. Did you
4 ask him whether there were any sales files reflecting
5 the purchases -- or reflecting any purchases by the
6 employees and family members of employees?

7 MR. BERKOWITZ: Objection, asked and
8 answered. You can answer.

9 THE WITNESS: I did.

10 BY MR. REHNQUIST:

11 Q And what did he say?

12 A He had -- he had went on to describe the meeting that
13 he had with his employees on the last day of the year
14 in which he offered them special pricing to take a
15 motorcycle, a brand new motorcycle. And a number of
16 them expressed interest, said, "Yes, we would like to
17 do that."

18 Q I'm sorry, I'm not asking you to repeat the
19 conversation. I just want to know did he answer your
20 question about whether there were sales files
21 reflecting those purchases?

22 A I don't recall that he directly answered them. He
23 was unable to produce any documents to me or for me
24 that showed any kind of contract or anything that
25 tied the -- those reported names to individual sales,

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1 VIN numbers or anything else.

2 Q Did you ask him to give you any such documents that
3 showed that?

4 A I had asked him for where the files would be on those
5 individual vehicles, and I had had opportunity at
6 that point to examine the files that they did have
7 that were complete for the subsequent purchasers. In
8 those files I found no notes, no records, no anything
9 indicating that the bike had been on hold or a
10 deposit had been put down on it or anything else to
11 suggest that that vehicle had been previously spoken
12 for.

13 Q Is a dealer required to keep a sales file for a sale
14 in the case where the motorcycle is subsequently
15 resold to somebody else?

16 A Yes.

17 Q And what's the -- what's the source of that
18 requirement?

19 A The dealer is required at the time that they submit
20 to the factory a sales warranty registration record.
21 That is our indication that that bike has been sold
22 to a retail customer. With that there should be at
23 the dealership as part of their contractual
24 requirements with us copies of that sales file or
25 that sales warranty registration record at the

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1 dealerships in the northeast region?

2 A That's correct.

3 Q And am I also correct that this subset reflects
4 inquiries that have been conducted only within a
5 certain time period?

6 A Yes, that's correct.

7 Q And what is that time period?

8 A I believe it's the last three years.

9 Q Did you make a determination in pulling these files
10 that this subset of dealership inquiries is
11 representative of the entire universe of inquiries as
12 reflected in your spreadsheet or your summary
13 document?

14 A I hadn't really thought about it. I don't
15 differentiate region from region. But it's
16 certainly -- in my opinion it's certainly
17 representative.

18 Q Are there any differences in the way in which
19 Harley-Davidson has enforced the nonretail sales
20 policy depending on what part of the country the
21 dealer is located in?

22 A I've not seen any evidence of that.

23 Q Are there any differences in the way Harley-Davidson
24 has enforced the nonretail policy depending on
25 whether the inquiry was made in the last three years

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1 or before then?

2 A No. Not that I'm aware.

3 Q Can you give me an estimate as to how many of the
4 inquiries that are reflected on your composite
5 summary document were before 2000?

6 A Very few, if any.

7 Q And is that because there were no inquiries or there
8 were only very few inquiries prior to 2000, or is
9 that because the documentation reflecting those
10 inquiries doesn't exist or was not reviewed by you?

11 A Neither.

12 Q Why is it?

13 A I put together the list of only those that I was
14 involved -- involved with or had knowledge of or had
15 ready access to or were available in the dealer files
16 when I went through them. Prior to me becoming more
17 involved there was some -- certainly some
18 enforcement. The nonretail policy has been in effect
19 since I believe 1990. Prior to me doing it, I don't
20 really know who was managing it.

21 Q Are you aware of any dealers being terminated for
22 noncompliance with a nonretail sales policy prior to
23 2000?

24 A Yes.

25 Q What dealer?